

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Pennsylvania State Implementation Plan
and Title V Operating Permits Program
(Plan Approval, Operating Permit
Program, and Title V Operating Permit
Program Regulations, 25 Pa. Code 127,
Chapter 127, Subchapters B, F and G)
Technical Support Document

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Introduction

On May 18, 1995, the Pennsylvania Department of Environmental Protection (PADEP) submitted revisions to its State Implementation Plan (SIP) and a Title V operating permits program to EPA for review and approval. As required under Title V of the Clean Air Act (Act) as amended in 1990, EPA has promulgated rules that define the minimum elements of an approvable operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250, July 21, 1992). The Act requires that States develop and submit Title V programs to EPA by November 15, 1993, and that EPA act to disapprove or approve each program within 1 year after receiving the submittal.

The SIP revisions submitted by Pennsylvania on May 18, 1995 propose several significant changes and additions to the Commonwealth's existing SIP-approved plan approval and operating permit programs. One purpose of these proposed SIP revisions is to make all of the Commonwealth's SIP-approved permit programs consistent with one another and with the amended Act. Another important purpose of the proposed SIP revisions is to allow the Commonwealth, upon EPA approval of the submitted programs and their subsequent incorporation into the SIP, to use the various programs to limit sources' potential to emit (PTE) for the purpose of exempting certain sources from Title V and other major

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source requirements of the Act. For example, as part of its May 18, 1995 submittal, Pennsylvania requested EPA approval of its operating permits program pursuant to Section 112 of the Act so that the Commonwealth could then issue federally enforceable operating permits that limit sources' potential to emit criteria and hazardous air pollutants to below Title V thresholds. Similarly, Pennsylvania submitted proposed revisions to its existing SIP-approved plan approval program for the purpose of acquiring the necessary authority, upon EPA approval of the program, to limit sources' potential to emit hazardous air pollutants (HAPs). This would exempt sources holding such a federally enforceable plan approval or permit from Title V and other major source requirements of the Act. Generally, this is expected to result in a sizeable reduction in the number of sources subject to Title V and other major source requirements of the Act, facilitate Pennsylvania's efforts to implement its Title V operating permits program by reducing the number of sources needing Title V permits, and allow the Commonwealth to focus its limited program resources on permitting just the larger sources that are subject to Pennsylvania's Title V program. For the regulated community, EPA's approval of Pennsylvania's operating permit and plan approval programs would provide smaller sources that have relatively large potential emissions with the option of voluntarily limiting their potential to emit to below major source threshold levels, exempting such sources from otherwise applicable Title V and other major source requirements of the Act.

Pennsylvania's plan approval regulations are codified in Subchapter B of 25 Pa. Code 127, whereas the State operating permits program regulations are codified at Subchapter F of 25 Pa. Code 127. Pennsylvania's Title V operating permits program regulations are codified in Subchapter G of 25 Pa. Code 127.

These proposed revisions to the Pennsylvania SIP apply to sources throughout the Commonwealth, in the absence of any separate, federally approved local agency operating permit or plan approval program. For purposes of Title V program adoption and implementation, Pennsylvania's proposed Title V program reviewed herein applies to major sources throughout the Commonwealth since no local (i.e., County or City) agency within Pennsylvania has yet received EPA approval of a separate Title V operating permits program.

Background

The Commonwealth of Pennsylvania held three (3) public meetings and the Environmental Quality Board (EQB) held three (3) public hearings concerning these regulations. On May 21, 1994, the PADEP published an advance notice of final rulemaking and held three public meetings to discuss the advance notice of final

rulemaking. The EQB approved the final regulations at its September 20, 1994 meeting. The final regulations were published in the Pennsylvania Bulletin, Volume 24, No. 48, and became effective on November 26, 1994.

The Commonwealth's plan approval and operating permit program regulations generally apply, in accordance with 25 Pa. Code § 127.11 and § 127.402(a), respectively, throughout the Commonwealth to air contamination sources proposed to be constructed, modified, reactivated (after one year or more of inactivity) and/or operated. The plan approval regulations are generally applicable to both minor and major new and modified sources. However, there are additional plan approval program provisions and requirements for major new sources and major modifications of existing sources specified in Subchapters D and E of 25 Pa. Code Chapter 127, applicable to PSD (Prevention of Significant Deterioration) and nonattainment new source review (NSR) sources, respectively. The provisions of Chapter 127, Subchapter F contain the Commonwealth's operating permit requirements. These requirements are applicable to all stationary air contamination sources in Pennsylvania and require each source to obtain an operating permit. This includes sources that were previously authorized to operate without a permit because they were constructed prior to 1972 and which now must apply for a permit no later than November 1, 1996. The State operating permit requirements are the minimum permitting requirements that a stationary air contamination source must meet in order to legally operate in Pennsylvania. Thus, State issuance of federally enforceable State operating permits provides an effective mechanism for limiting potential to emit for many sources located in the Commonwealth and exempting such sources from Title V.

On November 15, 1993, the Commonwealth of Pennsylvania submitted an operating permits program to EPA for review. The submittal was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on May 18, 1995. Based on additional information received in the May 18, 1995 submittal, EPA found the submittal to be administratively and technically complete on May 31, 1995. The Commonwealth submitted supplemental information on November 28, 1995. The submittal includes a letter from the Secretary of the Department of Environmental Resources, as the designee of the Governor of the Commonwealth of Pennsylvania, requesting approval of the Commonwealth's Title V program, a legal opinion from the State Attorney General stating that the laws of the Commonwealth provide adequate legal authority to carry out all aspects of the program, and a description of how the Commonwealth intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, a permit fee demonstration, a description of the Commonwealth's Title V program, and a proposed draft of an implementation agreement (IA)

to be negotiated between EPA and the Commonwealth of Pennsylvania. EPA and PADEP have nearly completed negotiations over the IA language. By letter dated December 14, 1995, EPA sent to PADEP a proposed IA that contains language that the agencies agreed to in their most recent discussions. This IA will be enclosed in the rulemaking docket.

As part of the May 18, 1995 submittal, Pennsylvania submitted to EPA for approval and incorporation into the Pennsylvania SIP a State operating permit program designed to create federally enforceable limits on a sources' potential to emit. Limiting a sources' potential to emit to below major source thresholds through the use of federally enforceable terms and conditions in a State operating permit exempts such a source from Title V permitting requirements. State operating permits programs which have been incorporated into the SIP renders permits issued pursuant to such a program as federally enforceable, and the program itself is referred to as a federally enforceable State operating permit program, or "FESOP" program. This FESOP mechanism allows sources to limit their potential to emit both criteria and hazardous air pollutants to below Title V applicability threshold(s), allowing these sources to avoid being subject to Title V or other major source requirements of the Act.

The Pennsylvania submittal also includes amendments to Chapter 139 of the Commonwealth's air quality regulations. Chapter 139, entitled "Sampling and Testing", sets forth the emissions sampling, testing and monitoring methods and procedures to be used in the Commonwealth. The proposed changes include providing a procedure to be utilized by the PADEP in updating and revising its "Source Testing Manual" and "Continuous Source Monitoring Manual" and updating and revising the references to source materials which may be utilized for sampling and testing procedures. The PADEP will provide public notice and an opportunity for comment whenever it proposes to update or revise its "Source Testing Manual" and "Continuous Source Monitoring Manual" as described in 25 Pa. Code § 139.5. The list of reference materials in § 139.4 is being updated by deleting certain reference materials and adding others. Finally, a number of administrative and technical changes are being made to Chapter 139.

Each of the separate permit programs, and a discussion of how each meets federal criteria for approval under 40 CFR Part 70 and Sections 110 and 112 of the Act, is provided below, beginning with the State operating permits program.

Federal Criteria for EPA Approval of State Operating Permit Programs [Part 52]

On May 18, 1995, Pennsylvania submitted for EPA approval and

incorporation into the Pennsylvania SIP a FESOP designed to create federally enforceable limits on a sources' potential to emit criteria and hazardous air pollutants. Pennsylvania's operating permits program regulations were adopted on November 26, 1994 and codified under Subchapter F of Pennsylvania's regulations.

The five (5) criteria that must be satisfied for EPA approval of a State operating permit program prior to its incorporation into the SIP were set forth in the June 28, 1989 **Federal Register** document (54 FR 27282). Permits issued under a program approved under Part 52 are federally enforceable and may be used to limit the potential to emit of sources of criteria pollutants. Similarly, permits issued under a program approved by EPA under Section 112(l) of the Act are also federally enforceable in that such permits may be used to limit the potential to emit of sources of hazardous air pollutants listed pursuant to Section 112(b) of the Act. Pennsylvania's operating permit program provisions of Subchapter F meet the June 28, 1989 criteria by ensuring that the limits will be permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to both EPA and the public. Specifically, these criteria require that (1) the program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any other Section 112 or other Clean Air Act standard or requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits issued under the program must be subject to public participation.

EPA Analysis of the Pennsylvania State Operating Permits Program [Part 52]

The following is an in-depth discussion detailing how each of the above-referenced approval criteria are satisfied by the Pennsylvania operating permits program submittal:

(1) The program must be submitted to and approved by EPA as part of the SIP.

As indicated above, Pennsylvania submitted its State operating permits program to EPA for approval as a revision to its SIP on May 18, 1995, and EPA, as part of this action, is proposing full approval of the submittal.

(2) The program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable.

Sections 127.443 and 127.444 of the PADEP's regulations require adherence to the terms of the operating permit. In addition, the Pennsylvania Air Pollution Control Act (APCA) makes it unlawful to violate the terms of an operating permit and establishes both civil and criminal penalties for violating the terms of an operating permit. The APCA allows the PADEP and citizens to enforce the terms of an operating permit in State court. See 35 P.S. 4008, 4009, 4009.1, 4009.3, 4010.1, 4013, 4013.6.

(3) The program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any Section 112 or other Clean Air Act standard or requirement.

Section 127.441 of the PADEP's regulations (relating to operating permit terms and conditions) requires that the permit incorporate the emission and performance standards and other requirements of the Clean Air Act and regulations adopted under the Clean Air Act. In fact, 127.441(b) states that "At a minimum, each permit shall incorporate by reference the emission and performance standards and other requirements of the APCA, the Clean Air Act, or the regulations thereunder." The first three words of this sentence effectively establish a minimum baseline for applicable requirements to be included in all State operating permits and ensures that operating permit terms and conditions will not relax any SIP or Section 112 emissions standard or requirement. EPA notes that Pennsylvania's operating permits program contains several of the same elements found in the Title V operating permits program regulations in 40 CFR Part 70. For example, Pennsylvania's operating permits program allows for revision of operating permits through minor or significant modification procedures, and through administrative amendment. Furthermore, "flexible permit" provisions providing for the establishment, in permits, of alternative operating scenarios, federally enforceable emissions caps and "deminimus emissions increases" which mirror Section 502(b)(10) of Title V are included in Sections 127.447, 127.448 and 127.449, respectively, in Subchapter F of the PADEP's regulations.

(4) Permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter.

The PADEP regulations for both plan approvals in Subchapter B of Chapter 127 and operating permits in Subchapter F of Chapter 127 provide broad authority to ensure that permit limitations, controls and requirements are permanent, quantifiable, and

otherwise enforceable as a practical matter. In addition, Section 127.424(e)(3) of the PADEP's regulations (relating to public notice) provides EPA authority to review and approve any operating permit used to avoid applicable federal requirements and thus establish a "synthetic minor."

Also, as described above, the APCA provides sufficient enforcement authority to ensure that permits are enforced and provides civil and criminal penalties in the event that permit terms are violated.

(5) Permits issued under the program must be subject to public participation.

Section 4006.1(b)(1) of the APCA and Section 127.402 of the PADEP regulations (relating to general provisions) provide that the PADEP will provide public notice and the right to comment on each permit prior to issuance or denial and public hearings are authorized in those circumstances where they are appropriate in Section 127.402 (relating to general provisions) and 127.428 (relating to conferences and hearings). Subchapter F describes the process for public notification and comment in Sections 127.424 through 127.431. EPA notes here that the public notice and comment process in the FESOP program is similar to the process in Sections 127.44 through 127.50 (relating to plan approval requirements). This allows the PADEP to provide public participation on the plan approval application and the operating permit application at the same time using a single public process. This is consistent with Pennsylvania's "integrated" approach to permitting which is designed to make the permitting process more efficient for PADEP, the regulated community, and the public. Pennsylvania's integrated permitting approach will, in many cases, allow a source to complete and submit all permitting documents relevant to its application and operation at one time, afford an opportunity for public input, and provide for sequential issuance of the necessary permits. This helps to consolidate and streamline the inherent redundancies of the permitting process.

As indicated above, Pennsylvania also submitted on May 18, 1995 for EPA approval extensive revisions to its existing new source review (NSR) construction permit (i.e., plan approval) program. Pennsylvania's new source review construction permit is referred to as a "plan approval." The Commonwealth's plan approval program has been part of its SIP for many years and meets the requirements in Section 110(a)(2)(C) of the Act. Section 110(a)(2)(C) of the Act requires all SIPs to provide for the regulation of the modification and construction of any stationary source within the areas covered by the plan implementation as necessary to assure that National ambient air quality standards (NAAQS) are achieved. The Commonwealth's plan approval rules referenced above were originally approved by EPA as part of the SIP on May 31, 1972 (37 FR 10842) for the purpose

of meeting the Section 110(a)(2)(C) requirement. In order to make its program consistent with the Clean Air Act Amendments of 1990, Pennsylvania had previously submitted, on February 10, 1994, its new source review (NSR) construction permit program to EPA for review and approval. EPA is reviewing this program submittal and will take the appropriate approval/disapproval action at a later date. As part of this action, Pennsylvania is making changes to its public hearing and administrative procedures in order to achieve consistency of such procedures throughout all of its permitting programs. EPA has reviewed these proposed changes to Pennsylvania's plan approval program and has determined that they meet all applicable federal requirements for approval.

EPA Approval of Pennsylvania's Plan Approval and Operating Permit Programs Under Section 112(l) [Part 63]

As part of this action, EPA is proposing to approve Pennsylvania's FESOP and plan approval programs, in Subchapters F and B, respectively, of the PADEP regulations, under the authority provided in Section 112(l) of the Act for the purpose of creating federally enforceable permit conditions for sources of HAPs listed pursuant to Section 112(b) of the Act. As described above, the PADEP plan approval program regulations were initially approved by EPA as part of the SIP on May 31, 1972 and EPA, as part of this action, is proposing full approval and incorporation into the SIP of Pennsylvania's FESOP program.

However, EPA approval of the PADEP plan approval and FESOP programs under section 112(l) is still necessary to extend Pennsylvania's existing authority under Section 110 of the Act to include authority to create federally enforceable limits on the potential to emit HAPs. Only Section 112 of the Act provides the underlying authority for States to limit potential to emit of HAPs in federally enforceable State operating permits and plan approvals. This necessitates EPA approval of Pennsylvania's operating permit program pursuant to Section 112(l) of the Act.

EPA's previous rulemaking actions on the various Pennsylvania permit programs for incorporation into the SIP provides a mechanism only for controlling criteria air pollutants and does not extend to HAPs. State permit programs, both construction and operating permits programs, must be granted approval by EPA pursuant to Section 112(l)(5) of the Act in order to provide States with a federally enforceable mechanism for limiting sources' potential to emit of HAPs. The original SIP approval of the PADEP plan approval program and EPA's proposed approval of Pennsylvania's FESOP program described above only extends to the control of HAPs which are photochemically reactive organic compounds (i.e., volatile organic compounds or VOCs) or particulate matter, since the scope of this original SIP approval

included only criteria, not hazardous, air pollutants. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs, since several air pollutants are currently designated under the Act as both criteria and hazardous air pollutants. Therefore, EPA is with this action proposing to approve Pennsylvania's plan approval and State operating permits programs pursuant to Section 112(1) of the Act. This will provide Pennsylvania with authority to establish, in plan approvals and State operating permits, limits on a sources' potential to emit HAPs to below major source threshold levels, thereby allowing those sources to avoid being subject to otherwise applicable Title V requirements. As a legal matter, no additional program approval by the EPA is required in order for "criteria" pollutant limits to be recognized as Federally enforceable. However, only Section 112 of the Act provides the underlying authority for limiting actual and potential HAP emissions through federally enforceable State operating and construction permit programs.

The PADEP plan approval program applies to new, modified and recently reactivated (after one year or more of inactivity) "air contamination sources", or to the installation of an air cleaning device on an air contamination source. The PADEP operating permits program applies to any "stationary air contamination source" proposed to be operated within the Commonwealth. An "air contamination source" is further defined under this section as, "Any place, facility or equipment, stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant." A "stationary air contamination source" is further defined under Title 35 of the Commonwealth's Health and Safety statute as "Any air contamination source other than that which, when operated, moves in a given direction under its own power." Furthermore, "Air contaminant" is defined under Title 35 Section 4003 as "Smoke, dust, fume, gas, odor, mist, radioactive substance, vapor, pollen or any combination thereof." Thus, the PADEP has defined "air contaminant" in such a broad manner that it can be interpreted to include HAPs, and the resulting scope of Pennsylvania's plan approval and operating permit programs is broad enough to encompass the regulation of not only criteria pollutants, but also of HAPs. Thus, EPA approval of Pennsylvania's proposed operating permit and plan approval programs would allow the State to specify, in plan approvals and operating permits, federally enforceable terms and conditions limiting sources' potential to emit HAPs.

The criteria used by EPA for the original approval of Pennsylvania's plan approval program into the SIP are located in 40 CFR 51.160-164. EPA believes that the PADEP's existing plan approval program meets the requirements of 40 CFR 51.160-164. EPA believes the most significant criteria in 40 CFR Part 51 for creating federally enforceable limits through construction

permits are those in 40 CFR 51.160-162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act", in order for EPA to consider any construction permit (i.e., plan approval) terms federally enforceable, such terms or conditions must be enforceable as a practical matter. Pennsylvania's plan approval program will allow the PADEP to issue plan approvals that are enforceable as a practical matter. Thus, any plan approvals issued in accordance with the Pennsylvania program and which are practically enforceable would be considered federally enforceable.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 Federal Register notice referenced above, are also appropriate for evaluating and approving the programs under Section 112(1). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to Section 112 of the Act. Hence, the following five criteria are applicable to FESOP approvals under Section 112(1): (1) the program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any other Section 112 or other Clean Air Act standard or requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits issued under the program must be subject to public participation. As described in more detail above, Pennsylvania's operating permits program already meets these criteria for the purpose of program approval under 40 CFR Part 52, i.e., for the purpose of issuing federally enforceable operating permits limiting potential to emit of criteria pollutants. However, these five approval criteria may also be used to evaluate State operating permit programs for approval under Section 112(1), i.e., for the purpose of limiting potential to emit of HAPs. The use of these criteria for evaluating programs for both criteria and hazardous pollutants is appropriate since the approval criteria are not based or dependent on pollutant, but on general program elements which must be present for the program to be deemed minimally approvable by EPA. Please refer to the detailed discussion and analysis provided above for an explanation of how Pennsylvania's operating permits program satisfies each of the five approval criteria. Since the PADEP's operating permits program meets the five program approval criteria for both criteria and hazardous air

pollutants, the Pennsylvania program may be used to limit the potential to emit of both criteria and hazardous air pollutants.

In addition to meeting the criteria discussed above, Pennsylvania's plan approval and operating permits programs for limiting potential to emit of HAPs must meet the statutory criteria for approval under Section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. The EPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice, with the addition that the State's authority must extend to HAPs instead of or in addition to VOC's and PM₁₀. The EPA currently anticipates that FESOP programs that are approved pursuant to Section 112(l) prior to the Subpart E revisions will have had to meet these criteria, and hence will not be subject to any further approval action.

EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. The EPA is therefore proposing approval of Pennsylvania's plan approval and operating permits programs to limit the potential to emit of HAPs now, so that the PADEP may begin to issue Federally enforceable permits limiting potential to emit as soon as possible. This will allow the PADEP to immediately begin exempting sources from Title V requirements where this is possible and appropriate.

As discussed above, Pennsylvania's plan approval program in Subchapter B of 25 Pa. Code 127 has already been approved in the SIP, and it satisfies the approval criteria for such programs, including the relevant criteria related to creating Federally enforceable limits in 40 CFR 51.160-162. In addition, Pennsylvania's plan approval program meets the statutory criteria for approval under section 112(l)(5), as follows:

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that Pennsylvania's plan approval

and operating permit programs contain adequate authority to assure compliance with section 112 requirements because the PADEP's plan approval program under Section 127.35(b) incorporates the provisions of 40 CFR Part 63 and Section 112 by reference and does not provide for the waiver of any section 112 requirement. Also, Section 127.35(e) of Pennsylvania's regulations provides that MACT standards established under Section 127.35 will be incorporated into the plan approval for each source. Sources that become minor through a plan approval or operating permit issued pursuant to either program would still be required to meet section 112 requirements applicable to non-major sources, and these requirements would be federally enforceable.

Regarding the requirement for adequate resources, the Commonwealth has committed, in writing, in its Section 105 grant agreement with EPA Region III to provide adequate resources for all air program activities, including the issuance of plan approvals authorizing new source construction and operating permits authorizing source operation. Further, the fact that Pennsylvania has successfully administered a plan approval and State operating permit program in the Commonwealth since 1972 is further evidence of the PADEP's ability to adequately administer and fund these programs. Finally, Pennsylvania has included in its air quality regulations under Subchapter I of Chapter 127 provisions for the collection of application fees from sources applying for either a plan approval or operating permit, or both. § 127.701(a) of the Commonwealth's regulations specifies that Subchapter I of the Commonwealth's regulations entitled "Plan Approval and Operating Permit Fees" establishes fees to cover the direct and indirect costs of administering the Commonwealth's various air pollution control and permit programs. § 127.702 provides for the collection of plan approval application fees ranging anywhere from \$750 to \$22,700, depending on the year application is made and the type of source seeking plan approval. Similarly, § 127.703 provides for the collection of operating permit application fees ranging from \$250 to \$350, and further requires collection of an annual operating permit administration fee pursuant to § 127.703(c). Thus, EPA believes that the PADEP has adequate resources to support the plan approval and operating permit programs for HAPs, and EPA will monitor the PADEP's implementation of the programs to assure that adequate resources continue to be available.

The EPA also believes that the PADEP's plan approval and operating permit program regulations provide for an expeditious schedule for assuring compliance with section 112 requirements. A source seeking a voluntary limit on its potential to emit is probably doing so to avoid a federal requirement applicable on a particular date. Nothing in the PADEP's programs would allow a source to avoid or delay compliance with the Federal requirement if it should fail to obtain the appropriate Federally enforceable

limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit. Accordingly, EPA believes that Pennsylvania's plan approval program in Subchapter B and operating permits program in Subchapter F of its air quality regulations satisfy the applicable criteria for establishing Federally enforceable limitations for sources of HAPs. Therefore, EPA is proposing approval of Pennsylvania's plan approval and operating permits programs in Subchapters B and F of the Commonwealth's rules pursuant to Section 112(1) of the Act.

Proposed Full Approval of Pennsylvania's Title V Operating Permits Program [Part 70]

In this part of the Technical Support Document (TSD) for the May 18, 1995 Pennsylvania program submittal, EPA is proposing to grant full approval to Pennsylvania's Operating Permits Program under Title V of the amended Clean Air Act. This portion of the TSD will serve as a "cover document" to the more comprehensive Main TSD Checklist and Checklist Attachments A through I.

Background

Title V of the Clean Air Act (CAA), as amended in 1990, requires each State to develop and submit an operating permits program to EPA for approval by November 15, 1993. The minimum program elements for an approvable operating permits program are those established by EPA regulations in 40 Code of Federal Regulations (CFR) Part 70 - State Operating Permits Programs. As part of its comprehensive May 18, 1995 submittal to EPA, the Commonwealth of Pennsylvania submitted a Title V operating permits program for review and approval. EPA determined the submittal to be administratively complete in a letter to the Commonwealth dated May 31, 1995.

EPA Evaluation of Pennsylvania's Title V Operating Permits Program Submittal

The attached checklist serves as the main technical and legal review of the Commonwealth's operating permits program, and consists of a Main Checklist and Attachments A through G, and I. (Attachment H is an EPA Phase II permit application form, which was not required as part of the submittal, and was not used in its review). Each requirement of Part 70 is reflected in the checklist and is correlated to the portion of the Commonwealth's program that was submitted in response to that requirement. All issues regarding specific portions of the Commonwealth's program

are noted where necessary. A number of issues warrant further explanation than could reasonably fit in the checklist format. These issues are further described below. The checklist refers to the comment number corresponding to the applicable discussion.

Comment 1 - Main VI.C.1

Proposed Exemption from Title V for Research and Development (R&D) Facilities- Under 25 Pa. Code § 127.502(c), R&D facilities located at a Title V facility are not required to be included as part of the Title V facility. However, for the purposes of determining Title V applicability, emissions from R&D facilities are aggregated with the rest of the facility's emissions. R&D facilities are defined in 25 Pa. Code § 121.1 as a stationary source whose purpose is to conduct research and development of products and processes, or basic research "for education or the general advancement of technology and knowledge" under the "close supervision of technically trained personnel." R&D facilities may not engage in the manufacture of products for commercial sale or internal manufacturing use "except in de minimus amounts on an infrequent basis." The emissions from the R&D facility must be less than the Title V threshold.

EPA interprets the Commonwealth's regulations as providing an exemption from Title V requirements for co-located R&D facilities. The current Part 70 rule does not provide any specific exemption from Title V for co-located R&D facilities. However, EPA's August 31, 1995 (60 FR 45530) and August 29, 1994 supplemental Part 70 notices and the preamble to the original Part 70 rule do provide for the separate treatment of co-located R&D activities under Title V. In the August 1995 notice, EPA proposed to revise the Part 70 definition of "major source" so that R&D activities could be considered separately for the purpose of determining whether a source is major. EPA further stated in that notice that it believes it appropriate to continue to implement the current Part 70 rule to allow for the separate treatment of co-located R&D activities. Thus, EPA believes that co-located R&D facilities may be treated separately for purposes of determining Title V applicability, and determining whether the Title V facility and the co-located R&D facility are major sources.

Pursuant to the August 1995 notice, emissions from R&D activities need not be aggregated with those of co-located stationary sources unless the R&D activities contribute to the product produced or service rendered by the co-located sources in a more than de minimus manner. As a result of this approach, nonmajor R&D facilities are exempted from Title V. The separate treatment of co-located R&D facilities, as provided for in EPA's August 1995 notice, exempts non-major R&D facilities from Title V since only major sources are required to obtain a Title V permit at

this time. Under the EPA's August 1995 proposal, research and development activities would be required to have a Title V permit only if the R&D facility itself were a major source.

The § 121.1 definition of "Research and Development Facility" provided in the Commonwealth's regulations is reserved exclusively for those research and development activities "with emissions less than the emissions thresholds for a Title V facility." Thus, by definition, only non-major research and development activities qualify as "R&D facilities" under the Pennsylvania regulations. Section 127.502(c) of the Commonwealth's regulations further requires that emissions from a co-located R&D facility be included when evaluating Title V applicability. In its August 1995 supplemental Part 70 notice, however, EPA proposed to exempt non-major R&D facilities not only from Title V applicability but also from the need to aggregate emissions from the R&D facility with emissions from the Title V facility for the purpose of determining whether a major source is present. Therefore, the Pennsylvania Title V program is at least as stringent in this regard than is required by EPA for Title V program approval.

The § 127.502(c) exemption from Title V provided for in the Commonwealth's regulations for nonmajor R&D activities is consistent with EPA's interpretation of the R&D facility exemption discussed in EPA's August 1995 supplemental Part 70 notice. As stated in that notice, R&D facilities are entitled to separate treatment under Title V and only R&D facilities that are in and of themselves major are subject to Title V.

Comment 2 - Attachment D.A.1.c

Origin and Authority-40 CFR 70.6(a)(1)(I) requires that each Title V permit, as issued by the permitting authority, specify and reference the origin of and authority for each permit term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. These requirements for permit content related to specification of the origin and authority for permit terms and conditions in Title V permits have been met by the Pennsylvania program primarily through the language of Section IV.B.16(a)(1) of the Commonwealth's Title V program description and through relevant provisions of an Implementation Agreement (IA) presently under negotiation between EPA and PADEP. (the draft IA as forwarded to Pennsylvania by letter dated December 14, 1995 has been made part of the rulemaking docket in this action). When this document is signed and becomes effective, it will be made a permanent part of the docket for this rulemaking action.

Section IV.B.16(a)(1) of the PADEP's Title V program description (entitled "Standard Permit Requirements") appropriately conveys

Pennsylvania's intention of meeting the requirements of 40 CFR 70.6(a)(1)(I). Section IV.B.16(a)(1) provides that PADEP's Title V permit applications shall require sources to identify all applicable requirements, including citations to the origin of and authority for each requirement. EPA considers this language, along with the Title V permit application form itself, as sufficient assurance that Pennsylvania's Title V operating permits will include citation to the origin and authority for each permit term and condition.

Furthermore, as described above, provisions requiring Pennsylvania to specify, in Title V permits, the origin of and authority for permit terms and conditions, will be included and further delineated in an implementation agreement (IA) under negotiation between EPA Region III and PADEP. This agreement is expected to be finalized and signed by both parties prior to final EPA rulemaking in this matter.

Comment 3 - Attachments C.V.A, C.V.E, C.II.A.5

45 Day EPA Review Prior to Permit Issuance- Under § 127.522, EPA is afforded a 45 day period to review proposed permits for conformity with Clean Air Act and Part 70 requirements. Section 127.522(f) further specifies that EPA may veto a permit within this review period.

It is noted that § 127.522 does not ensure that EPA will have an opportunity for a 45 day period of pre-issuance review of permits that are revised as a result of the public and affected State's comments. It appears that pursuant to § 127.521(d) and (e) and § 127.522(f), the 30 day public comment period may commence at the same time as EPA's 45 day review period. Thus, it is possible that Pennsylvania could modify and issue the proposed permit on the basis of public (or affected State) comments.

However, § 127.522(f) does provide that the final permit shall be provided to EPA "upon issuance if material substantive changes are made to the proposed permit." If EPA objects within 45 days of final permit issuance, "the permit will be revoked." Both Section IV.B.17(h) of the program description and § 127.522(f) state that if EPA objects to the issuance of the final revised permit within 45 days, the permit will be revoked. EPA concludes from the regulatory language and program description that post-issuance revocation will be straightforward and automatic, in the event that EPA objects (within 45 days of receipt of the revised permit) to permit conditions that result from public or affected state comments.

Provisions defining "material substantive changes" will be included in the IA to be negotiated between EPA and PADEP prior to final rulemaking in this matter. This will help to clarify the criteria to be used by Pennsylvania in determining which final

permits must be provided to EPA for post-issuance review. Moreover, the final signed IA document will contain a provision confirming that post-issuance permit revocation is indeed automatic for revised permits issued by PA but objected to by EPA within 45 days of issuance.

Comment 4 - Main IX.A

Acid Rain Requirements- Section 6.5 of Pennsylvania's Air Pollution Control Act ("APCA"), 35 P.S. §4006.5 , and 25 Pa. Code § 127.531 contain special operating permit provisions related to Title IV of the Clean Air Act, the legislation's "acid rain" section. In pertinent part, APCA Section 6.5 authorizes DEP to develop an acid rain permit program; incorporates the definitions of sections 402 and 501 of the Clean Air Act; establishes a schedule for permit application and compliance plan submission; and establishes certain permit requirements for permits concerning sulfur dioxide emissions and allowances.

25 Pa. Code § 127.531 sets out an appropriate schedule for submission of acid rain permits and compliance plans (§ 127.531(b)); provides that the permit application and compliance plan is binding and enforceable until permit issuance (§ 127.531(c)); requires the source to comply with permit conditions "no later than the date required by the Clean Air Act or regulations thereunder" (§ 127.531(d)); allows permit revisions any time after submission of the application and compliance plan (§ 127.531(e)); prohibits emissions in excess of allowances or applicable emission limitations, premature use of allowances, or contravention of any permit term (§ 127.531(f) and (g)); and requires compliance with accounting procedures for allowances promulgated under Title IV (§ 127.531(g)(3)).

It is noted that Pennsylvania has not directly incorporated by reference EPA's Title IV regulations found at 40 C.F.R. Part 72, and has not adopted EPA's model rules. However, several regulatory provisions require that Pennsylvania's Title V program be operated in accordance with the requirements of Title IV and its implementing regulations. Section 127.531(a) provides that the acid rain provisions of that section "shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder." Section 127.531(b) requires that affected sources submit a permit application and compliance plan "that meets the requirements of . . . the Clean Air Act and the regulations thereunder." Further, the § 121.1 definition of "applicable requirements" for Title V sources includes standards or other requirements "of the acid rain program under Title IV of the Clean Air Act . . . or the regulations thereunder."

For purposes of simplicity and national consistency, EPA prefers incorporation by reference of Part 72 regulations, or adoption of

the model acid rain rules. However, the statute and regulations cited above appear to support the Attorney General's certification that "Commonwealth law is consistent with, and cannot be used to modify, the Acid Rain requirements of 40 CFR Part 72." Attorney General Opinion at 8-9.

For additional assurance that Pennsylvania's operating permit program will operate in compliance with applicable acid rain requirements, the Commonwealth has agreed to accept delegation of the applicable provisions of 40 C.F.R. Parts 70, 72, and 78 for the purpose of implementing the Title IV requirements of its operating permit program. PADEP shall apply these provisions for purposes of incorporating Acid Rain program requirements into each affected source's operating permit; identifying designated representatives; establishing permit application deadlines; issuing, denying, modifying, reopening, and renewing permits; establishing compliance plans; processing permit appeals; and issuing written exemptions under 40 C.F.R. §§ 72.7 and 72.8. This commitment is contained in the IA presently under negotiation between EPA and PADEP.

Furthermore, at EPA's request, Pennsylvania's Title V program description has been revised to clarify that the Commonwealth will implement its acid rain program in accordance with applicable provisions of 40 C.F.R. Parts 70, 72, and 78; and that PADEP will perform completeness and substantive reviews of acid rain permit applications, and that acid rain permits will be issued in accordance with EPA's acid rain permit writer's guidance. The revised program description also states the Pennsylvania will initiate appropriate enforcement activities to compel compliance with permit conditions.

Comment 5 - Attachment D.G

Absence of Part 70 Emergency Defense Provisions- Pennsylvania has incorporated by reference NSPS, NESHAP, and MACT technology-based emissions limitations/standards in 25 Pa. Code 122.1, 124.1, and 127.35, respectively. Where these technology-based standards incorporate an emergency defense, that emergency defense becomes part of Pennsylvania law by reference. Pennsylvania's program does not provide for any other emergency defense, and does not specifically provide for a Part 70 emergency defense. While it is true that a specific Part 70 emergency defense is lacking, EPA clarified, in its August 31, 1995 supplemental Part 70 notice (60 FR 45530), that its across-the-board requirement for an emergency defense in state regulations was not required under the Clean Air Act, and that states are therefore not required to adopt such an emergency defense.

According to the August 31, 1995 supplemental notice, 60 FR 45530, a State may include such a defense in its Part 70 program

to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6(g). Generally, Title V is intended to be a procedural mechanism to incorporate existing CAA requirements in a permit, and not a means to impose additional substantive requirements or defenses. Thus, Pennsylvania has not included emergency defense provisions in its Part 70 program and this is not inconsistent with 70.6(g) since State adoption of emergency defense provisions under Part 70 is discretionary, not mandatory.

Proposed Action

For the reasons cited above, EPA is proposing to approve, pursuant to 40 CFR Part 52 and Section 112(l) of the Act, and the approval criteria specified in the June 28, 1989 **Federal Register** document, Pennsylvania's operating permits and plan approval program regulations as submitted to EPA on May 18, 1995. Furthermore, EPA proposes to grant full approval to Pennsylvania's Title V Operating Permits Program pursuant to the requirements of 40 CFR Part 70.

PART 70
OPERATING PERMITS
PROGRAM REVIEW CHECKLIST

PREPARED BY
THE ENVIRONMENTAL PROTECTION AGENCY

August 5, 1993

EPA3GEN028276

PURPOSE

This checklist has been developed as a tool to assist EPA Regional Offices in reviewing operating permits programs submitted by permitting authorities to EPA for approval. The checklist can also be used by State and local permitting agencies, if they wish, to compare their operating permits program to the program requirements established in EPA's regulations.

The minimum program elements for an approvable operating permits program are those established by EPA regulations in 40 CFR Part 70 - State Operating Permit Programs. This checklist is a reorganization of the Part 70 regulations into a format more usable by program reviewers. Each requirement of Part 70 is reflected herein with a box to indicate whether or not it is included in the program, and comment lines for any explanation (e.g., the reviewer may wish to note that the specific program element required by Part 70 is not included in the program but an equivalent program element exists which is an acceptable alternative provision).

It is not mandatory that this checklist be used. It is only a tool to be used as an aid during the review process.

Previous draft versions of this checklist were reviewed by EPA Regional Offices as well as State and local permitting agencies, i.e., it was made available by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials on the Technology Transfer Network electronic bulletin board. For additional information, please contact EPA's Permits Program Branch at (919) 541-5586.

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REQUIREMENTS

PART 70 - OPERATING PERMITS PROGRAM REVIEW CHECKLIST

OPERATING PERMITS PROGRAM ELEMENTS

[NOTE: This checklist is appropriate to a local agency permitting program covering the area of jurisdiction of the local agency. In such case, the term "State" should be read to mean the local government or permitting agency, as appropriate.]

I. GOVERNOR'S LETTER

Y/ N	<u>Comments/Action Required/ Submittal Reference</u>	Does the letter from the Governor, or his or her designee, contain the following:
Y	Letter dated May 15, 1995, signed by James M. Seif, Secretary, Pennsylvania Department of Environmental Resources (PADER), requests approval of the Commonwealth's Title V operating permits program.	A. A request for EPA approval of the program as the official program of the State permitting authority.

Y	<p>According to Section IV.B.8(b) of the program description, neither Philadelphia nor Allegheny County has received EPA approval of a separate Title V program. Accordingly, Pennsylvania's regulations and Title V program are applicable in both counties at this time. The Philadelphia County Department of Health, Air Management Services, will implement the State program in Philadelphia County. The Allegheny County Health Department will implement the State program in Allegheny County. PADEP will collect all permit and emission fees and provide grants to the counties to implement the State's Title V program.</p>	<p>B. A description of how the entire geographic area of the State is covered by the State agency's permitting program, excluding lands within the exterior boundaries of Indian reservations, or by a combination of programs administered by the State agency plus programs administered by local agencies, and evidence of the legal authority for the local agencies to carry out their respective programs.</p>
Y	<p>PADEP's program will cover all major sources of regulated air pollutants. There are no Indian reservations in Pennsylvania.</p>	<p>C. Identification of Indian tribal lands within which the State will administer the permit program, a listing of sources subject to the permitting program on those lands, and a demonstration of jurisdiction of the permitting agency on those lands.</p>

II. COMPLETE PROGRAM DESCRIPTION

Y/ N	<u>Comments/Action Required/Submittal Reference</u>	Does the program description contain the following:
Y	Section IV.B.1 of the submittal entitled "Program Description" contains an explanation of how PADEP intends to carry out its responsibilities for implementation of the Title V operating permit program through implementation of the regulations contained in 25 Pa. Code Chapters 121, 127 and 139. Also see Sections IV.B.8(a) and IV.B.11 of the submittal for an explanation of how PADEP will implement applicable requirements set forth in other Titles of the Clean Air Act.	<p>A. An explanation of how the permitting authority intends to carry out its responsibilities to implement an operating permit program including the following: [70.4(b)(1)]</p> <ol style="list-style-type: none"> 1. How the program will be implemented in accordance with the Part 70 regulations. 2. How the program will implement the applicable requirements set forth in other Titles of the Act, e.g., the Acid Rain Program requirements set forth in Title IV of the Act.
Y	Sections IV.B.1 and IV.B.8(b)	B. A brief description of the organizational structure of the agency(s) generally describing the permit-related responsibilities (detailed coverage of this is required by item # V. B. 2. below).
Y	Sections IV.B.1 and IV.B.2	C. A listing of the statutes, regulations, guidelines, policies, and procedures that comprise the program.
Y	Sections IV.B.2 through IV.B.17	D. Other information necessary to describe the overall operation of the program.

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III. PERMITTING REGULATIONS

Y/ N	<u>Comments/Action Required/Submittal Reference</u>	A. Does the program submittal contain the following: [70.4(b)(2)]
Y	25 Pa. Code Chapters 121, 127 and 139 contain regulations which comprise the operating permits program. Appendix A of the submittal provides a copy of these and other regulations.	1. The regulations that comprise the permitting program.
Y	<u>Pennsylvania Bulletin</u> Vol. 24 No. 48 dated November 26, 1994, which was part of the submittal, details several issues which were raised and discussed during the public comment and hearing process.	2. Evidence of the procedurally correct adoption of the regulations that comprise the program, including any available notice of public comment and any significant comments received on the proposed program as requested by EPA.
Y	Appendices A and B of the program submittal contain copies of applicable State statutes and regulations authorizing the operating permit program.	3. Copies of all applicable State or local statutes and regulations including those governing state administrative procedures that either authorize the operating permit program or restrict its implementation.
Y	See <u>Pennsylvania Bulletin</u> , Volume 24, Number 48, dated November 26, 1994 and Attorney General's Legal Opinion, Appendix D of the submittal, signed and dated May 5, 1995.	B. Were the statutes and regulations lawfully adopted at the time the Attorney General's legal opinion was signed and fully effective at the time of program submittal? [70.4(b)(3)]

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IV. ATTORNEY GENERAL'S LEGAL OPINION

Y/ N	<u>Comments/Action Required/Submittal Reference</u>	Does the program submittal contain the following: [70.4(b)(3)]
Y	See Appendix D, page 1.	A. A Statement of adequate legal authority to carry out all aspects of the program from the Attorney General or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel.
	N/A	B. If the opinion is issued by an official other than the Attorney General, a certification that the official has full authority to independently represent the State agency in court on all matters pertaining to the program.
Y	The legal opinion provides specific citations to federal and State law. See Appendix D of the submittal.	C. Citations in the legal opinion to specific statutes, administrative regulations and, where appropriate, judicial decisions that demonstrate adequate authority.
	See Attachment A.	D. The provisions included in Attachment A.

V. PERMITTING PROGRAM DOCUMENTATION

Y/ N	<u>Comments/Action Required/Submittal Reference</u>	Does the program submittal contain the following relevant permitting program documentation (some of which could be contained in the permitting authority's regulations): [70.4(b)(4)]
Y	See Appendix E of the submittal. No forms specific to the Acid Rain Program were included in the submittal.	A. Forms and associated procedures to be employed in the operating permit program, including any forms specific to the Acid Rain Program. [70.4(b)(4)(i)]
Y	§ 127.503	1. Permit Application form(s).
Y	§ 127.511 through § 127.513, and Appendices E and G.	2. Permit form(s).
N	No reporting form(s) were included in the submittal.	3. Reporting form(s).
Y	Fully detailed inspection strategies and compliance monitoring procedures are included in Appendix F, Section IV of the draft Memorandum of Agreement (MOA) dated May 11, 1995, and Section IV.B.5 of the program description portion of the submittal.	4. Relevant guidance issued by the permitting authority to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies). [70.4(b)(4)(ii)]
Y	Section IV.B.8 entitled "Adequate Personnel and Funding."	B. A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program including the following: [70.4(b)(8)]
Y	Section IV.B.8(a)	1. A description in narrative form of the scope, structure, coverage, and processes of the State program.

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Y	Section IV.B.8(b) provides a description of PADEP's organization and structure and indicates that neither Philadelphia nor Allegheny County has received approval to implement a separate Title V operating permit program.	2. A description of the organization and structure of the agency or agencies that will have responsibility for administering the program delineating the responsibilities of each, including procedures for coordination and the designation of a "lead agency" to facilitate communications between EPA and other agencies if more than one agency has administrative responsibility for the program.
Y	Section IV.B.8(c) and Appendix H of the submittal.	3. A description of the agency staff who will carry out the operating permit program, including the number, occupation, and general duties of the employees.
Y	Section IV.B.1	4. A description of applicable procedures, including permitting procedures and any administrative or judicial review procedures.
Y	Section IV.B.8(c) and Appendix H of the submittal.	5. Estimates of the annual permit program costs for the first 4 years after approval, including that portion of Phase II of the Acid Rain Program occurring during the first 4 years, and a description of how the permitting authority plans to meet those costs.
Y	The transition plan is described in Section IV.B.11 of the submittal entitled "Transition Plan and Schedule."	C. A transition plan including a schedule for submittal and final action on initial permit applications for all sources to which the program applies including the following: [70.4(b)(11)]
Y	Section IV.B.11 of the submittal; § 127.505(a) and § 127.421(c).	1. Requirements for receipt of all permit applications within 1 year after the effective date of the program.
Y	§ 127.421(c)-(d)	2. A schedule ensuring that final action is taken on at least one third of the permit applications annually for a period not to exceed 3 years after the effective date of the program.
Y	§ 127.35(h), Section IV.B.11 of the submittal entitled "Transition Plan and Schedule."	3. Procedures to ensure action on early reduction applications, under section 112(i)(5) of the Act, within 9 months of receipt.

Y	§ 127.505(a) and § 127.531(b). [However, the Pa. regulations do not include any provisions for reopening the acid rain portion of the permit to add Acid Rain Program NOx requirements]	4. A schedule for submission of permit applications and for permitting affected sources in accordance with the deadlines and regulations for Phase II of the Acid Rain Program including reopening the Acid Rain portion of the permit to add Acid Rain Program NOx requirements in accordance with the regulations promulgated under section 407 of the Act. [70.4(b)(1)(iv) and 72.73(a) and (b)]
Y	See Section IV.B.4 of the submittal entitled "Program Documentation."	D. A description of the data management system and information availability including the following:
Y	See Section IV.B.4 of the submittal.	1. General description of the provisions for collection and storage of necessary permit application, permit, and any other necessary data.
Y	§ 127.522(a), (c)	2. Provisions that the permitting agency will submit to EPA upon request any information obtained or used in the administration of the operating permit program upon request without restriction and in a form specified by EPA, including, to the extent practicable, computer-readable files compatible with the Aerometric Information Retrieval System (AIRS). [70.4(j)(1)]
Y	§ 127.512(c)(5)	3. Provisions that, where the permitting authority submits information to EPA under a claim of confidentiality, the permitting authority will submit the claim of confidentiality to EPA with the information specified in item # V. D. 2. above. [70.4(j)(1)]
Y	§ 127.522(c)	4. Provisions that the permitting authority will keep for 5 years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the program complies with the requirements of the Act or the Part 70 regulations. [70.8(a)(3)]

**VI. PROVISIONS IN REGULATIONS, PROCEDURES, GUIDELINES,
OR POLICIES FOR IMPLEMENTING THE OPERATING PERMITS PROGRAM.**

Y/ N	Comments/Action Required/Submittal Reference	Provisions
	See Attachments B, C and D.	A. Does the operating permits program include the provisions for implementing the program as contained in Attachment B for permit application content and submission, Attachment C for permit issuance, renewal, reopening, and revision, and Attachment D for permit content?
	See Attachments B, C and D.	B. Does the Attorney General's legal opinion indicate that the permitting authority has legal authority to implement the provisions of Attachments B, C, and D?
Y	See definitions under § 121.1	C. Applicability Requirements.
Y		1. Does the State program provide for permitting of at least the following sources? [70.3(a)]
Y	The definition of "Title V facility" under § 121.1 tracks the definition of "major source" provided in 40 CFR Part 72.	a. Any major source as defined in section 70.2 of the Part 70 regulations.

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Y	<p>§ 121.1 definition of "applicable requirements" includes standards or requirements under CAA Section 111, and the definition of "Title V regulated air pollutant" includes air contaminants subject to regulation under Section 111. Consistent with 40 CFR § 70.3(b), PA has defined "Title V facility" under § 121.1 to encompass nonmajor facilities that are subject to EPA rulemaking that requires the source to obtain Title V permits. Also see § 127.504(b).</p>	<p>b. Any source, including an area source, subject to any standard, limitation, or other requirement promulgated under section 111 of the Act.</p>
Y	<p>Major sources under Sections 111 and 112 are included under the definition of "Title V facility" in § 121.1 and are subject to Title V permitting requirements. § 127.504(b) addresses nonmajor (area) Section 111 and 112 sources. Definition of "applicable requirements" under § 121.1 includes standards and other requirements under Sections 111 and 112, and Section (iv) of the § 121.1 definition of "Title V facility" encompasses all sources not otherwise included in Sections (i) through (iii) of the definition.</p>	<p>c. Any source, including an area source, subject solely to a standard, or other requirement under section 112 of the Act other than sources for which section 112(r) is the sole applicable requirement.</p>

Y	Acid rain requirements under 40 CFR Part 72 are included as "applicable requirements" for Title V facilities under the definition of "Applicable Requirements" provided in § 121.1. § 127.531(b) requires permits for affected sources under CAA Section 405.	d. Any affected source under the Acid Rain Program. [72.73(a)]
Y	Section (iv) under the definition of "Title V facility" in § 121.1 includes facilities that EPA regulates under Title V pursuant to EPA rulemaking. § 127.504(b) includes nonmajor sources subject to a standard or other requirement under Section 111 or 112 of the Act.	e. Any other source in a source category designated by EPA.
Y	§ 127.504(c)	f. Any source in a category exempted by the permitting authority, subject to the restrictions under item # IV. C. 2. below, which opts to apply for a permit under the EPA-approved operating permit program. [70.3(b)(3)]
Y	§ 127.504(a),(d)	2. If the State program (except the Acid Rain portion) exempts any sources from the operating permit program, are the exempted sources limited to sources listed in item # VI. C. 1. above that are not major sources or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act. [70.3(b)(1)]

Y	Under paragraph VIII of the implementation agreement, Pennsylvania has agreed to accept delegation of the Section 72.7 & 72.8 exemption requirements.	3. If sources are exempted under the Acid Rain Program, are the exemptions limited to new units and retired units? [72.7 and 72.8]
NA	Not applicable.	4. For purposes of determining complete applications, does the program include a description of any criteria (subject to EPA approval) which define insignificant activities or emissions levels which need not be included in permit applications? [70.4(b)(2)]

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